

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

RANDY CLEARY,

Plaintiff,

-v-

Case No. 17-cv-14158

CORELOGIC RENTAL PROPERTY
SOLUTIONS, LLC,

Defendant.

_____ /

PLAINTIFF'S MOTION TO COMPEL DOCUMENTS, ET AL
BEFORE THE HONORABLE MAGISTRATE DAVID R. GRAND
Detroit, Michigan, Monday, December 10th, 2018.

APPEARANCES:

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(Transcriber not present at live proceedings)
(Transcript produced from digital voice recording)

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WITNESSES:

NONE

EXHIBITS

NONE

1 Detroit, Michigan.

2 Monday, December 10th, 2018.

3 At or about 10:12 a.m.

4 -- --- --

5 THE CLERK OF THE COURT: All rise. United States
6 District Court for the Eastern District of Michigan is now in
7 session, the Honorable David R. Grand presiding. You may be
8 seated. The Court calls case number 17-14158, Cleary versus
9 CoreLogic.

10 MR. LYNGLIP: Your Honor, Ian Lyngklip and Sylvia
11 Bolos on behalf of the plaintiff, Randy Cleary.

12 THE COURT: Good morning.

13 MR. KOPP: Good morning, your Honor. Jeff Kopp on
14 behalf of CoreLogic.

15 THE COURT: All right, thank you. Good morning. All
16 right, so the Court has before it a number of motions that were
17 set for hearing today. The two motions to compel, the motion
18 to exclude undisclosed witnesses and then there was a motion
19 just filed the other day which I've reviewed regarding the
20 protective order and whether the defense has waived its rights
21 to object to the confidentiality, confidentiality challenges by
22 the plaintiff so let's start with the ones that are actually
23 before the Court starting with the motions to compel although I
24 intend to also take up that motion that was filed at least to
25 address it I should say. Go ahead.

1 MR. LYNGLIP: Good morning, your Honor. Umm, I know
2 your Honor's ready. I've never been here and not have you be
3 ready for the motions. I'm not going to go back over what's
4 already in the briefing. I think that the high-level view is
5 this, our interrogatories production requests were tendered
6 July 6th. We don't have any answers to interrogatories that
7 are not objected to. We don't even have a signature on any
8 interrogatories. Everything that we have asked of this
9 corporation has been deemed objectionable including things like
10 identify the manager responsible for compliance with 15 U.S.C.
11 1681(p)(b). It's the only claim in this case. The compliance
12 manager's off limits. The witnesses who have knowledge; not
13 relevant. The, for purposes of production, their policies,
14 procedures and practices for assembling reports which is the
15 elements of the claim; not relevant. Every single brief that
16 we've got in front of the Court right now claims that the
17 policies, procedures and practices to assemble these reports,
18 to match the data from whatever source was there to Mr. Cleary
19 not deemed relevant by this, by this defendant and so we find
20 ourselves in this situation where the disclosures where we
21 would expect to see support, documentary support and witness
22 support for policies, procedures and practices that are
23 reasonably assured to, to comply with the statute, to assure
24 maximum possible accuracy and in support of the two defenses,
25 the affirmative defenses, number three and number six which say

1 we followed procedures, there is no evidence disclosed. There
2 is no evidence disclosed in their mandatory disclosures.
3 There's no witness identified. When we ask about identifying
4 these materials and these witnesses in the interrogatories, the
5 answer is not relevant and when we ask for production, the
6 answer is not relevant.

7 THE COURT: So I understand that and I understand
8 your frustration and I understand that they are two different
9 issues. The one is or is not relevant and kind of what the
10 merits are and I understand what the plaintiff's objection to
11 what the defense has done and I'll address that.

12 MR. LINGKLIP: Sure.

13 THE COURT: But I'm also trying to just understand
14 for myself kind of what happened here and what, what they
15 allegedly did wrong because as I understand it, the -- your
16 client is not the person who was convicted of these crimes or
17 charged with these crimes.

18 MR. LINGKLIP: Yes.

19 THE COURT: And somebody had taken on his identity
20 including his Social Security number and, umm, my understanding
21 is what defendants did was gather information from
22 publicly-available sources and, and then just turn around and
23 report it so --

24 MR. LINGKLIP: Yeah.

25 THE COURT: -- so what could they have done

1 differently and what, what did they do that is unlawful?

2 MR. LYNGLIP: I and that's a great question 'cause
3 obviously that's the core of what the proofs are going to be
4 here and why it's necessary that we're here today. So, sadly
5 we had a late production from the defendants on Friday. We
6 were attempting to printout several of these documents and for
7 technical reasons we were not able to get through that
8 printing, but there's one document and it is available to the
9 Court on the web. Did you bring a copy?

10 MS. BOLOS: I didn't, but we can e-mail it right
11 away, your Honor.

12 MR. LYNGLIP: To Mr. Butts, but let me give you a
13 description. So the standard for conduct under the statute
14 following reasonable procedures to assure the maximum possible
15 accuracy requires that the defendants only use reliable sources
16 of information when they are assembling reports and then they
17 have to implement processes to properly match that data to the
18 right people so you might imagine a case for, for a person
19 named David Smith. We actually had a person named David Smith
20 in a case in this court. Lots and lots of David Smiths, so the
21 defendant not only has to go to a reliable source of data, but
22 then they have to be able to track that data to the appropriate
23 person. So because there are lots of David Smiths, they have
24 to process to make sure they get the right David Smith's data
25 with the right file, okay? So that's a two-step process. The

1 first is the source of the data, the second is the matching
2 characteristics, all right, and those are all procedures,
3 policies and practices that every single credit reporting
4 agency maintains. We've filed dozens, perhaps hundreds of
5 cases in this court and this is always the same issue when we
6 come to matching problems and identity theft problems.

7 So to answer your question directly, the source of
8 the data that they selected was a mystery to us and it's not
9 answered in this, in their interrogatory responses or in their
10 production. At the initial meetings of counsel and throughout
11 the meet and confer process, defendant continued to maintain to
12 us that this data was given to CoreLogic by the Michigan court
13 system. Now ostensibly you might think okay, perfectly
14 reliable source. Not necessarily so, but that was what they
15 maintained throughout and you started pushing back on that --

16 THE COURT: Maintained by what evidence?

17 MR. LYGKLIIP: I'm sorry?

18 THE COURT: What evidence was proffered to support
19 that that's where they got the information from?

20 MR. LYGKLIIP: None, that is my point. So they
21 wouldn't give us the evidence so what we did was we started
22 cutting subpoenas to the Wayne County Circuit Court, to the
23 courts all around the country that are reflected in the reports
24 that they issue about Mr. Cleary so they say that he got
25 convicted in Wayne County so we issue a subpoena in Wayne

1 County.

2 MS. BOLOS: Auglaize County.

3 MR. LYNGKLIP: They said Auglaize County, Ohio. We
4 issued subpoenas that Auglaize County, Ohio, say show us where
5 you gave this data and as we started going through this and
6 noticing these deps, they backtracked on us and say you know
7 what, we didn't get it from the Court and this is just meet and
8 confers. They then say that it was given to them by the
9 Department of Corrections.

10 THE COURT: What do you mean given to them? I mean,
11 nothing --

12 MR. LYNGKLIP: The answer is I don't know. That's,
13 it's an easy answer. We are just finding --

14 THE COURT: No, I know that's kind of why we're here,
15 but I'm just trying to get an understanding of what actually is
16 alleged even to have happened in terms of this case.

17 MR. LYNGKLIP: Well, what's alleged to have happened,
18 our allegation is that it's not him and that it followed
19 improper procedures and if you will just bear with me a moment,
20 I will answer your question directly, I promise.

21 So we cut a subpoena to the Department of Corrections
22 and we took their deposition and the answer is no, they did not
23 give the data to CoreLogic. So we finally got production last
24 after we filed this motion of some internal documents that bear
25 a brand that, and the brand is OTIS, O-T-I-S and what that

1 stands for is the Offender --

2 THE COURT: I'm familiar with it.

3 MR. LYNGLIP: Okay, so and just so I can make it for
4 the record if you don't mind, I apologize, the Offender
5 Tracking Information System which is a system maintained by the
6 Department of Corrections for the state of Michigan. So we
7 took their deposition, asked if they gave the data to
8 CoreLogic. The answer is no, so that --

9 THE COURT: When you say gave it to, OTIS is a
10 publicly-accessible website so they don't need to when you say
11 give it to, that's what I'm trying to understand. Is there an
12 allegation that somebody else, some third party affirmatively
13 transmitted information or just that the defendants went on the
14 website and accessed it themselves?

15 MR. LYNGLIP: Those are two separate processes, both
16 of which are used by records vendors like CoreLogic and so when
17 an attorney says to me they gave it to us, it means some --
18 they have an agreement with some data provider to actually
19 package up a batch of data and transmit that batch of data to
20 CoreLogic. That's what that meant to me. We, we tried to
21 understand and get the evidence of this which is why we took
22 the deposition. The answer that we got from OTIS was no, they
23 did not affirmatively provide the data to CoreLogic, they did
24 exactly as you said which is that they make that data available
25 on the public facing website which means that CoreLogic if they

1 are getting, getting their data from OTIS, it means that they
2 are doing what is colloquially known in the technology industry
3 as scraping data. They have a bot that's going out and running
4 searches, blank searches across this database and pulling down
5 what data comes to them and then parsing that data and feeding
6 it into their own database. That is not obtaining information
7 from a reliable source. That is them scraping data and the
8 problem with this now that we are starting to actually get to
9 this, not with any assistance from CoreLogic mind you, the
10 documents that I, I was referring to that we can e-mail to Mr.
11 Butts are there are two disclosures on the OTIS system. If you
12 go log on the OTIS system right now, in order to gain access to
13 that system, you must agree as a term of use that you
14 understand that the information is, A, not reliable and B,
15 should never be used for credit reporting purposes which is
16 what we're talking about. So there's a warning on these
17 systems that the information is not reliable and the reason the
18 information is not reliable is that the OTIS system, the names
19 and the personal identification information is fed in directly
20 from the captioned information from the Michigan court system
21 which means if a person in Detroit who's been convicted of five
22 or six felonies and doesn't want to be recidivized,
23 habitualized and thrown away because they've got three strikes
24 and they're out. They throw their wallet in the garbage and
25 they say my name is Joe Jones, whatever the name is. That name

1 follows them throughout the system entirely and the captions of
2 the Court documents are not necessarily an accurate reflection
3 of the identity. It's a well-known problem for both OTIS, for
4 the offender tracking system, for the Michigan court system,
5 for the federal, umm, information system, the NCIS database.
6 Everybody knows that the captioning facing documents of these
7 records are in and of themselves not always reliable and even
8 all the more so for the offender tracking system which is why
9 it is a term of use.

10 So to answer your question directly, what did they do
11 wrong? Now that we know or we think we know where they got
12 this data from, the answer is they relied on an unreliable data
13 source. They took data that they knew was not likely to be
14 accurate, they incorporated it into a database which requires
15 that they have procedures and follow procedures to assure
16 maximum possible accuracy. Taking data from a database like
17 that which is riddled with facially wrong information without
18 verifying which is exactly what is required under the terms of
19 use. It has to be verified with the ICHAT system which is the
20 Michigan State Police's system, has to be verified through
21 there before it's relied on. They don't do that and how do we
22 know we don't do that? 'Cause we went and took ICHAT's
23 deposition as well and they do not verify and get data from
24 ICHAT. So when would look at ICHAT and we went to ICHAT and
25 asked them to run Mr. Cleary back through ICHAT, the answer is

1 Mr. Cleary has no criminal history and all that would have
2 taken for CoreLogic to do is to follow the terms of use which
3 they apparently must have agreed to. We don't know how they
4 technologically got it or whether they had people sitting there
5 data processing or whether they had a bot running. That's
6 information that we're trying to get out of this discovery
7 production here of the interrogatories. That's the first part
8 of it.

9 The second part of it is that all of the convictions
10 that are in the OTIS system and mind you OTIS does not, is not
11 a permanent record, it only follows offenders who have been in
12 the correctional system within the preceding three years. So a
13 prisoner who's been released three years ago is no longer in
14 that system. A prisoner who was sentenced to do county jail
15 time, not in that system. Only if they come into the
16 Department of Corrections which means prisons, felonies and
17 only for three years. Anyway, if you look that data, the
18 underlying data at least that we saw that was available, the
19 names that are associated with that are not Randy Cleary.
20 They're all associated with a person named Randy Reeds
21 (phonetic) which is the name that the identity thief assumed.
22 Mr. Cleary, I can't remember what year, but some time around
23 the 2000s, Mr. Cleary literally changed his name to avoid this
24 problem. The identity thief didn't know it so he kept using
25 the old name Randy Reeds. So the question is to that second

1 prong of that test that I was telling you about before, first
2 prong is reliable source of data. Second one is proper
3 matching algorithms to make sure that the data matches. So if
4 you look at the data for this identity thief whose true name is
5 Benny Parker, none of the data that he gave the police for any
6 of the convictions that are in the OTIS system actually match
7 Randy Cleary because Randy Cleary changed his name and he
8 didn't know that.

9 So the question is how is it that these people and
10 meaning CoreLogic, how is it that CoreLogic is following
11 reasonable procedures to assure the maximum possible accuracy
12 when they're relying on a database which is facially inaccurate
13 and they match somebody who doesn't have all the same personal
14 identifiers and if you see that the names don't match, umm, if
15 you and I were to sit down with to sets of records and look at
16 two sets of records where one record says Randy Cleary and the
17 other says Randy Reeds, we would look at that and we would say
18 ah, there's a discrepancy there, that's notice to me I need to
19 do more research and figure out whether the same. That's not
20 what with we see CoreLogic doing. What we see them doing is
21 basically disregarding the differences, completely throwing
22 them away and only looking for the matching algorithms and
23 saying good enough, on the report it goes. That's what they
24 did wrong.

25 THE COURT: Okay. That was a good, long answer, but

1 I appreciate in it. That's a compliment. I appreciate that.

2 MR. LYNGLIP: I just trying to -- I know that we
3 haven't seen you on these cases, but did that answer your
4 question directly?

5 THE COURT: Yes, no, I really appreciate that as I
6 said. So that does give me some better insight into a lot of
7 what you're asking for which seems frankly relevant to those
8 points, but why do you need things like past and present
9 contracts between CoreLogic and its furnishers of public record
10 information if we know, if you know right now that the way they
11 claim to have gotten this was through the process you just
12 described --

13 MR. LYNGLIP: Yep.

14 THE COURT: -- why do you need things like their past
15 and present contracts with other furnishers of public record?
16 I mean, I don't even know --

17 MR. LYNGLIP: Yeah, that's great question and okay,
18 so let me go back so that you understand what that is actually
19 requesting of them. So in the credit reporting, umm, under the
20 statute, there are three different kinds of parties who are
21 regulated by the statute. There's the credit reporting
22 agencies, in this case CoreLogic. There are data users. Data
23 users are people like the people who receive the report, the
24 landlords that turned Mr. Cleary down for a tenancy and then
25 there is data furnishers. Data furnishers are people who

1 voluntarily agree to provide data or as in the word that you
2 used, give data to CoreLogic. There's an ongoing relationship
3 and they are regulated under the statute. Now if for instance
4 the Department of Corrections had agreed to provide data to
5 CoreLogic, then they would be a data furnisher for purposes of
6 the statute and in that instance there would be notice to all
7 those data furnishers of the -- there's mandatory statutory
8 requirements of a notice that goes to them about providing
9 accurate data and part of the procedures that the CFPD and the
10 Federal Trade Commission have promulgated say when you board or
11 sign up new furnisher, you have to make sure that they're
12 giving you good data and that they know that they're giving
13 good data and that is why it is so absolutely critical that we
14 find out whether or not there's a relationship as counsel for
15 CoreLogic claimed to us, that there's a relationship between
16 OTIS and the Department of Corrections so --

17 THE COURT: So that's fine, but that doesn't get to
18 why you're asking for all with -- it says all present and past
19 contracts --

20 MR. LYGKILIP: In which production request, your
21 Honor?

22 THE COURT: It's number seven -- I'm sorry, eight,
23 all present and past contracts between CoreLogic and its
24 furnishers of public record information.

25 MR. LYGKILIP: Yep.

1 THE COURT: That could be, I'm assuming that could be
2 hundreds of entities all throughout the country that have
3 nothing to do with, with this, so --

4 MR. LYNGLIP: That is absolutely correct your Honor
5 and --

6 THE COURT: Why do you need all of that?

7 MR. LYNGLIP: The answer is that is what we would
8 call pattern and practice evidence. So part of the claim here
9 is, number one, that they are, umm, going out and
10 affirmatively -- to compare the situation we have with what
11 would normally be expected. If there was a true data
12 furnisher, those data furnisher contracts would notify those
13 furnishers hey, your information has to be accurate, you've got
14 to verify it before you send it to us, you have to warrant that
15 it is true and accurate. Compare that with what they do with
16 the Department of Corrections and the answer is they do nothing
17 to correct or verify this data that they may be getting on
18 their own. So that pattern and practice evidence would be
19 relevant and I think you're assuming something that is, is
20 again at issue for this very motion which is I don't know that
21 they have any rec -- any furnisher contracts with any public
22 entity. In other words, I think and this is why I would love
23 to see what we have asked for in the motion which is if they're
24 claiming that this is unduly burdensome because we have perhaps
25 asked them to produce reams and reams of furnisher contracts,

1 they haven't said that. They may not have any furnisher
2 contract with public records suppliers. They may not have any
3 furnisher contracts with any courts or correctional systems at
4 all which would also in and of itself be a very fruitful topic
5 of discussion between myself and their 30B6 representative when
6 I sit down with him, why don't you actually buy this data?
7 What do you have to do with this data if you're not getting it
8 from furnishers? So this is the kind of thing that we would
9 expect to see in a declaration or an affidavit or a document
10 submission by the, by CoreLogic saying hey, we have over 50,000
11 data furnishers, do you really want that? If they had said
12 that to me, my answer would have been no, I don't need that. I
13 don't need 50,000 contracts. That would be unreasonable to
14 produce and I couldn't winnow through it, but that has been a
15 black box. We have gotten no information from CoreLogic or
16 their counsel about what's actually at issue. It may be that
17 what's needed is all, all that's needed is a template document
18 that they use and any standardized variations that they have
19 perhaps and any ones that are applicable in this case. I don't
20 know what's, what they have because they haven't told us.
21 Their answers give us none of this. Certainly whatever is
22 there, you know, their relationships with other data furnishers
23 is relevant by comparison to the conduct that they've engaged
24 in in this case. What's reasonable under the circumstances and
25 what is proportionate to the needs of the case, I don't know

1 because again we don't have that declaration of undue burden
2 here in front of the Court and I think that's the one thing
3 that we should absolutely get to. That's, umm, if that's a
4 sticking point for us.

5 THE COURT: All right. And so would your comment be
6 the same for number 10 which asks for any document identifying
7 every source that you've used to acquire criminal or public
8 information, record information from any court and like again
9 that does strike me as potentially, umm, ex -- you know, that
10 what would be responsive to that I would assume would be
11 extremely voluminous and I guess I don't know, but --

12 MR. LYNGLIP: That's exactly or point which is that
13 I, you know, I, umm, yeah, defendant obtain relevant info --
14 umm, yeah. I would think that for purposes of this case, their
15 response says and I'm going to quote from their response:

16 "As noted above defendant obtained the
17 information relevant to defendant's
18 consumer report in question from the
19 referenced courts."

20 That's their response. They say they got this
21 information from the courts. At minimum I would think that we
22 would be entitled to those relationship documents as to the
23 courts that they got this from, but I don't think given our
24 subsequent conversations that those actually exist and I don't
25 think there's any documents that exist for any other courts and

1 all I'm trying to do here really I think is to put the lie to
2 what we've been told which is we're being told that they're
3 getting this data from courts and that courts are affirmatively
4 acting or operating as furnishers for purposes of the statute.

5 THE COURT: Why not ask them if in an interrogatory
6 do you have contracts with --

7 MR. LYNGLIP: Judge, the answer is I could do it
8 with an interrogatory, but if there aren't any contracts, their
9 response to this would be the thing that I would normally
10 respond which is there are no such documents that exist. That
11 gives me something that's admissible and we can do that in a
12 meet and confer, but they won't give us this information or
13 somebody who's knowledgeable about what's going on. So again,
14 you know, umm --

15 THE COURT: All right.

16 MR. LYNGLIP: -- at minimum I would think that the
17 documents that they're referencing in relation to the courts
18 for Mr. Cleary would be, umm, would be fair game and certainly
19 appropriate to the needs of this case.

20 THE COURT: All right. Anything else on this
21 particular motion?

22 MR. LYNGLIP: Umm, we're talking about the
23 production?

24 THE COURT: Right.

25 MR. LYNGLIP: Umm, I think that the only, the only

1 capstone that I would give you is this and this was in our
2 reply brief. The procedures that we need are all the
3 procedures that they've got in relation to preparation of these
4 reports. We've received a supplemental production from the
5 defendant, about 200 odd pages roughly of policy and procedural
6 manuals relating to disputes. That is not the preparation of
7 the report, it is not at issue in this motion and the fact of
8 the matter is that the policies, procedures and practices for
9 assembling reports and vetting data sources like OTIS, whatever
10 they are, whether they're going to be scraping them, I don't
11 think that they get the option of cherry-picking the evidence
12 that they want. I see this, this motion is being, you know,
13 two pronged; namely, they haven't produced them in their
14 disclosures or identified them in their disclosures. I don't
15 think that they get the opportunity to withhold these documents
16 from us and then produce documents or witnesses to support
17 policies, procedures and practices that are relevant to this
18 case. If they want to talk about that, that's fine, we need to
19 see that before hand and they don't get to cherry-pick which
20 ones they get to produce and say oh, these ones are helpful for
21 us about, umm, about our data sources. We need to see
22 everything and either we've got to see all those policies,
23 procedures and practices or they've got to be barred from
24 producing people, umm, producing documents and I think that
25 certainly under the best evidence rule if they're going to talk

1 about these, then, you know, they're going to have to produce
2 these documents at trial. They can't just have a witness come
3 up and take the stand and say we have the best policies and we
4 comply with everything. Those have got to be in front of the
5 trier of fact and I think that that is the most important thing
6 that I get to you for this. The only other question I would
7 ask you is are you comfortable that we have provided enough
8 authority in relation to things like financials and other cases
9 and pattern and practice? Do you have any questions for me
10 about those because I know those are typically ones that are
11 more difficult for the Court.

12 THE COURT: No, I don't have questions about that. I
13 more just had questions about, I mean, the fact that we have so
14 many requests and I'm hoping to avoid needing to go through
15 them and rule on them one by one by one and hoping to give you
16 kind of a, a ruling that would apply that hopefully you could
17 go through yourselves, but I don't know if that's going to be
18 possible just in light of the, you know, the nature of how you
19 you all have, you know, gotten to this point. So let me just
20 hear from the defense and then we'll see how we might be able
21 to efficiently rule on the motions. All right, go ahead.

22 MR. KOPP: Good morning. So your Honor, you know,
23 this case was a, is basically a rehash of the 2014 case that
24 Mr. Cleary brought against, in the case of
25 Cleary v. Daniel Haynes where he sued the Department of

1 Michigan Secretary of State, the Department of Corrections and
2 others and in that case, you know, the Court ended up
3 dismissing the case because, you know, Mr. Cleary was
4 previously known as Randy Reeds and in that, umm, and so he had
5 two other names before he was the current Randy Cleary. The
6 information that was reported by the records indicated that it
7 was accurate information based on the conviction of Randy Reeds
8 which was the plaintiff's name prior to him changing it with
9 the same birthday.

10 Now in this case, they've asked us for a plethora as
11 you correctly pointed out of information that's not relevant to
12 anything and I'll tell you why. CoreLogic obtained the
13 information that they reported to the housing, the housing
14 company through OTIS. We gave them the raw information that
15 showed the information that was reported directly from the
16 court records with the maximum accuracy of those records showed
17 Randy Reeds being convicted in Ohio and in Michigan with the
18 same birth date as the plaintiff and the fact that he never
19 went and disputed that information, you know, to this date he's
20 never filed an identity theft affidavit or anything like that.
21 So what they're trying to obtain is all of the algorithms and
22 the other proprietary confidential information that's behind
23 the scenes in how we, how CoreLogic gets the information from
24 OTIS which isn't disputed, we've got the information which
25 we've already provided to them and given them the information

1 that we've reported. So if there is a violation of the Fair
2 Credit Reporting Act, on its face there's a violation. You
3 don't have to go behind and obtain all the contracts with
4 vendors or anyone else or, you know, the other categories of
5 documents they're asking for, their financial information and
6 all this other stuff that's really not relevant to the claim
7 which is did we or did CoreLogic provide accurate or inaccurate
8 information.

9 THE COURT: But first of all as of the filing of this
10 motion, the plaintiff didn't know any of that it sounds like
11 because that was all just provided, okay? So you can't then
12 say oh, what are we doing here. They filed the motion because
13 none of that had been provided. Maybe had that been provided,
14 we wouldn't be here on all of these issues, I don't know, and
15 secondly --

16 MR. KOPP: No, Judge, he knew when he was denied the
17 apartment, the copy of his credit report was provided.

18 THE COURT: Yes, but he doesn't know how -- he didn't
19 know about OTIS I don't believe or that your client, that
20 that's how they supposedly obtained it and now we have these
21 issues that counsel's raised about well OTIS says that you
22 can't rely on it. I don't know if that's, you know, if that's
23 true or not, but, umm, the, umm, you know, but the discovery --
24 they're certainly entitled to discovery about what happened, at
25 a minimum about what happened here and what policies and

1 procedures were in place that guided CoreLogic in whatever it
2 did and I guess I --

3 MR. KOPP: Right. For Mr. Cleary's case, I don't
4 have a problem with that. If we, we limit it to what did they
5 do in this case with respect to obtaining information from
6 OTIS, how did they get that information and applied it to
7 Mr. Cleary, that's one thing, but they're asking for, you know,
8 every vendor or every situation of how they, they process and
9 what their algorithms are. That's way overly broad.

10 THE COURT: Oh, I understand it could be, but it
11 might not be, I don't know. When you say algorithms, I assume
12 somebody types in a name and hits enter and it goes OTIS and,
13 you know, you type in the state and, I mean, I don't know. I
14 think that's one of the issues and the other issue is like
15 counsel raises, you know, he doubts that there are any of
16 these, umm, relationship contracts with courts or with, you
17 know, offender systems and if that's the case, then there is no
18 burden. Then really the answer is no such documents exist.

19 MR. KOPP: So we provide an amended response like I
20 said on Friday to that particular request, number 10. He read
21 the old request. In the new request, we made it very clear
22 that we objected because we believed it was harassing and undue
23 burdensome, unduly burdensome. We've produced a copy of the
24 raw data received regarding plaintiff which identifies the
25 source of information and the exact information reported in the

1 public record. They take the record from OTIS which is what
2 OTIS is reporting and they, that's what they identified and
3 provided. So to go beyond that, you don't -- there's no need
4 to go beyond that and go into the mechanisms behind the scenes
5 of what's going on with the -- how they, they apply the
6 information when it's not disputed that they got the
7 information from OTIS to make the report.

8 So, you know, Judge, again with the financial
9 information, they're asking for every lawsuit that CoreLogic's
10 ever been sued on. I mean, there -- it's just, it's a fishing
11 expedition frankly to go well beyond what is required in --

12 THE COURT: But for instance, okay. So, you know,
13 I've just never seen briefing like this. Frankly, I'm just
14 really surprised to receive the defendant's briefs like this
15 because for example the plaintiff cites a series of cases for
16 the proposition that if other consumers have lodged similar
17 complaints, that it could be relevant to the issue of
18 willfulness and they cite Dalton which is a Fourth Circuit case
19 and they cite a couple of other cases at least one of which was
20 within the Sixth Circuit and defense's brief, you don't discuss
21 any of those cases. You don't say, you don't analyze any of
22 the legal issues. You just essentially say oh, well we're
23 going to win on summary judgment so don't make us go through
24 discovery. Well, then file a summary judgment brief. Maybe if
25 I saw a summary judgment brief was on file and I read it or a

1 motion to dismiss was on file and I read it and I thought wow,
2 this really looks meritorious and I really don't see the need
3 for discovery to be able to answer these legal questions, maybe
4 I'd enter an order, you know, denying you without prejudice
5 until that's resolved, but none of that's on the record. Your
6 entirely brief was essentially saying we're going to win
7 summary judgment so don't make us, don't make us engage in
8 discovery and that's just extremely inappropriate and I really
9 am very surprised to see that from defense.

10 MR. KOPP: All right. Well, fair enough. Fair
11 enough. I do think that that's partly the position that we're
12 taking I guess is that there are, there really is not a
13 meritorious claim that probably has to get resolved on, on
14 summary and, you know, this --

15 THE COURT: But you do summary after the --

16 MR. KOPP: I understand, but the level of discovery
17 that they're asking for is so overly broad and unduly
18 burdensome and that, you know, it's --

19 THE COURT: Well, I don't know if it is. I agree it
20 could be, but if it actually only involves a handful of
21 documents or a couple hundred pages of documents or even a
22 couple thousand pages of documents, then I would disagree and
23 without some kind of affidavit saying we have, you know, 1,000
24 of these contracts and they comprise, you know, X number of
25 pages or, you know, some level of specificity about why it's

1 burdensome, I can't conclude that it's burdensome. I mean, I
2 agree it sounds like it, it might be, but counsel's proffered
3 his belief that it actually is more likely that it's going to
4 be very non-burdensome. I don't know. So I, I mean, I guess I
5 don't know what I'm supposed to do with this. I mean, I want
6 it to be efficient and I want it to be tailored to what's, you
7 know, really necessary, but I can't, I can't just not allow
8 discovery because the defendant says we're going to win summary
9 judgment and --

10 MR. KOPP: Fair enough. So we have not had a meet
11 and confer on the specific issues that they're addressing.
12 They filed their motion to compel right away. We tried to have
13 this, these conversations with them to try to say well look,
14 why are you asking for this or why are you not asking for, you
15 know, or what our position is and the position is well, we're
16 not, you know, we've already beat that horse is what I've
17 heard. So, you know, we're left with having to come before
18 your Honor to try to, you know, resolve this without having
19 properly went through the whole meet and confer process.

20 THE COURT: Well, that's why I arrange phone calls
21 with you guys to try to avoid being here and we're still here
22 and then I would have expected to see, you know, briefs that
23 helped me to actually resolve the issues on the merits and I
24 really, there's really nothing from the defense for me to do
25 anything with and, you know, I don't want to just say well the

1 defense didn't give me anything so therefore it's just like the
2 wild west and whatever they asked for, 100 percent produce it
3 if that's really not necessary, but there's -- I kind of don't
4 have much of a choice on that other than, other than if you go
5 through anything in particular and you can point to me and say
6 well this one in particular is really, umm, excessive and
7 here's why. I don't know if you're prepared to do that on any
8 of these.

9 MR. KOPP: I'm not right now, your Honor, honestly,
10 but, you know, I would be happy to sit down with the other side
11 and go through them one by one as we have on some and produced
12 certain policies. Like he said, we produced identity theft
13 procedures and dispute procedures that are what would happen if
14 Mr. Cleary had decided to, you know, object to or, you know,
15 question or dispute the identity report.

16 THE COURT: Well Mr. Lyngklip said the issue from
17 their perspective isn't a dispute procedure, it's the
18 procedures that were involved in the preparation of the
19 reports.

20 MR. KOPP: Right and what I said before, your Honor,
21 I think is the answer to that is that there is no dispute that
22 CoreLogic got the information that was publicly reported by
23 OTIS. They've provided that to Mr. Cleary and it shows where
24 the report or where the information came from.

25 THE COURT: But how did they get that? How did they

1 get it? Was there a human being that, that, okay, but they're
2 entitled to discovery on that so that they can be able to
3 present it to the Court and say, umm, you know, the defense is
4 relying, here's the defense's summary judgment motion where
5 they say oh we got it from OTIS and they're entitled to
6 discovery to show affirmatively there wasn't a human being that
7 looked at it, there wasn't a human being a clicked on it, there
8 wasn't a human being that read the disclaimer and they're
9 entitled to, you know, the discovery necessary to prove those
10 things.

11 MR. KOPP: Right and so they have the corporate
12 representative of CoreLogic's deposition scheduled for December
13 18th. They have the opportunity to ask those questions during
14 that corporate representative's deposition. They believe that
15 that's important for their case.

16 THE COURT: But they have a right to ask informed
17 questions based on the documents that are supposedly what has
18 guided CoreLogic's procedures and then see if what happened --
19 what if what happened was different than the procedures? What
20 if CoreLogic has a procedure that says whenever you're dealing
21 with criminal matters, here's the procedures we must follow, we
22 must have an actual eyes on the thing, we must compare the
23 photograph in OTIS to the driver's license photo. I mean, I
24 don't know what it says and let's just assume that's the
25 procedure and then CoreLogic and then they depose the guy in

1 the 30B6 and they say well no, we didn't follow that procedure.
2 All right, well then that's how you, that's how you, you know,
3 prove a case and it just seems like CoreLogic's frankly
4 preventing them from being able to, you know, make their case
5 to the best extent they can and I agree, when I read a lot of
6 these, it did strike me as very broad, but I don't know
7 unless -- I don't know exactly how broad it is until there's
8 some kind of proffer that shows that it is that broad and that
9 shows that it is that burdensome and that hasn't been shown. I
10 think you had, you know, agreed with that and so I would hate
11 to make an order that requires just a tremendous amount of
12 excess, you know, work and documents and trees being destroyed,
13 but I haven't been shown that that's, that that's what's going
14 to happen if I grant this motion. So I don't know, unless you
15 have anything else to add?

16 MR. KOPP: Umm, no, your Honor.

17 THE COURT: All right.

18 MR. LYGKLIP: If I may?

19 THE COURT: Yes.

20 MR. LYGKLIP: Mr. Butts was kind enough I was able
21 to get those disclaimers, if I can approach?

22 THE COURT: Sure.

23 MR. LYGKLIP: Thank you. Got a copy for Mr. Kopp as
24 well.

25 THE COURT: I've got to say I've used OTIS from time

1 to time and I've never seen it, but I don't doubt you, but --
2 I'm not using it for any credit reporting I know.

3 MR. LYNCKLIP: No, but this is how everybody gets
4 through this. This is the general way. There's a second
5 exhibit underneath which is a little more explanation.

6 THE COURT: All right, so what am I looking at?

7 MS. BOLOS: The red box, your Honor.

8 MR. LYNCKLIP: The red box that's the disclaimer
9 there which reads Department of Corrections of the Michigan,
10 state of Michigan offer this information without any express or
11 implied warranty as to its accuracy. The information on the
12 database may not actually reflect the most current location
13 status, projected release date or other information regarding
14 an offender. Although every effort is made to maintain
15 accurate records, no action should be taken as a result of
16 information found herein without confirmation with the MDOC,
17 the Michigan State Police through the use of the Internet
18 Criminal History Access Tool ICHAT or review of the court file.
19 The Michigan State Police ICHAT can be found and there's a web
20 link and the reason that this is important is that last
21 sentence which says or review of the court file, that is in
22 conformity with FTC opinion letters concerning credit reporting
23 and consumer reporting databases. As I'm sure the Court knows,
24 the docket sheet for this court and any other court in the
25 state of Michigan and any other court in the country are

1 intended to be high-level reviews or summary information of
2 what has happened in court. Courts speak through their orders,
3 not through their dockets and so the FTC has required before
4 anybody can use a background check for purposes of employment,
5 that they have to go into the court record and review the
6 actual sentencing documents because so often the registry of
7 actions or the docket sheets don't actually reflect what's
8 going on and to the extent that OTIS is itself scraping data
9 from the Michigan court system's docket sheet and not from the
10 underlying records of conviction or the formal documents that
11 identify the offender which would normally be the PSI, the
12 presentencing investigative report. They identify, they do
13 every effort, make every effort at that point to really and
14 truly identify people using fingerprint biometric matches. The
15 state of Michigan knows that this information is not
16 potentially accurate and that identity thefts happen all the
17 time. It's in the deposition that Ms. Bolos took. She asked
18 about it, so there's another page there, but we don't need to
19 belabor that.

20 The other thing that I think I would point out is,
21 umm, there has been much made of the fact that we have not met
22 and conferred with this defendant. We have gone Herculean
23 lengths to apprise them of our position in relation to this
24 discovery. Ms. Bolos spent almost an entire billable day
25 trading phone calls between Mr. Kopp and Mr. Attawa (phonetic)

1 and in their own e-mail back in October, Mr. Attawa scolded us
2 for deciding to move to compel given quote "our substantial
3 good faith at meet and confer efforts". It's an exhibit to
4 your Honor's, it's exhibit 33-3.

5 We have reached out and the problem has not been at
6 least from our side as we view it has not been that we've
7 failed to act. It is simply that we do not have counsel that
8 has made a reasonable investigation into the documents and
9 information available and the rejoinder comes back every time
10 well we haven't met and conferred, we just have to get more.
11 We're on a timeline here and the reality is I'm sitting down
12 with a 30B6 deposition witness a week from today and -- not a
13 week from today, on the 18th.

14 MS. BOLOS: Yes, a week from tomorrow.

15 MR. LYNCKLIP: A week from tomorrow and if your Honor
16 was to devote his efforts and good offices of this Court to
17 nothing about writing this opinion between now and then, I
18 don't see any documents coming our way in time for that
19 deposition, that positional deposition and I don't see any
20 conceivable way that I get ready for that deposition. We have
21 an extension of discovery, but again, you know, allowing time
22 for an opinion and a reasonable amount of time for production
23 of documents, we have a very serious problem here and this is
24 not for lack of our, our efforts at attempting to secure this
25 voluntarily and to the extent that this defendant has

1 voluminous documents that your Honor wishes them to produce or
2 produce some evidence of, we have never been short of the
3 willingness to meet and confer. I don't need documents, I
4 don't need a million documents on my desk that are going to
5 only make it more difficult for me to winnow through it and
6 find what's at issue in my client's case. We need to have
7 either, you know, a fulsome production in time to do what we
8 need to do or we need to just cut this off and move on with
9 what we can get in the time that we have remaining and that is
10 the concern that I have as, you know, somebody who's got to be
11 getting on planes and going places to take depositions because
12 this deposition, this is only the first, you know. This is
13 just very high level trying to find out what they have and what
14 they've been keeping from us and who may actually know what we
15 need to know and then I think the only other thing for your
16 Honor to keep in mind is there's also a, at issue in this case
17 in terms of relief a request for injunctive relief and so that
18 was the subject of an early Rule 12 motion and --

19 THE COURT: Yes, you saw it.

20 MR. LYNGLIP: Yeah, exactly and so there wasn't much
21 by way of a legal principles that we can do, you know, extract
22 from that, but we know that we're moving forward on and the
23 test for injunction is going to be the test for any other
24 injunction which is is this defendant doing what they're doing
25 willfully and are they going to keep doing what they're doing

1 in the absence of a court order and so much of the documentary
2 proof that we've asked for is directed not only at willfulness,
3 but will also be directed or used, useful for determining
4 whether or not we need to have an injunction to stop them from
5 using inappropriate data sources like the OTIS database and
6 that seems to be where that request for relief is actually
7 heading right now is to ask them to, umm, to request that the
8 Court enjoin them from ever using OTIS again unless they verify
9 it with ICHAT as is directed by the terms of use. So that's
10 all we have on the motion.

11 THE COURT: All right. So all of these ones that are
12 objected to are in dispute?

13 MR. LYNGLIP: We did receive a production and I
14 think one of the things that's not in dispute is an
15 organizational chart. We do have that organizational chart.
16 It does look like it's an appropriate organizational chart, RTP
17 number four. We received a dec sheet for an insurance policy
18 and while I understand it's something, it is not what is
19 required by either Rule 26(a)(1) or our request for production.
20 We asked for the actual policy. We're entitled to that and
21 there's reams of case law that we can provide on dec sheets
22 under Rule 26(a), it's just not appropriate.

23 They have given us screen shots and I think that's
24 number one actually? Yeah, it's number one, one and two, they
25 provided us screen shots from the consumer relations system. I

1 don't know if it's complete, but certainly I take them at their
2 word that it is now complete. We will be asking about whether
3 there are other screen shots available, but I think that that's
4 fairly well resolved as of Friday.

5 They have given us dispute manuals, four manuals,
6 about 200 pages. Unfortunately those are not actually at issue
7 in this motion, that we did request those documents in our
8 request for production. I think it was number 34. We chose
9 not to move forward on that to move to compel. We are looking,
10 you know, our motion is directed at data acquisition, data
11 vetting, matching of --

12 THE COURT: So do we need to go through -- I mean,
13 because I don't want to write an opinion on this, I want to
14 just give you a ruling and get you going with this 'cause we've
15 already taken, there's already been too much time spent on this
16 issue. So let's just go through them that are in issue in the
17 motion.

18 MR. LYNGLIP: Sure. All right, do you want to go
19 item by item through what I've got in the motion or do you want
20 me to look at the request for production? The actual requests?
21 I mean 'cause --

22 THE COURT: Let's just look through the request for
23 production.

24 MR. LYNGLIP: Okay. All right. Again, I think as
25 to number one, I believe we have that. I will take Mr. Kopp at

1 his representation if he wants to make one to the Court that we
2 have all the documents that would conform to that.

3 MR. KOPP: I believe we've produced his file.

4 THE COURT: All right, one two should be the same.

5 MR. LINGKLIP: Yep.

6 THE COURT: All right.

7 MR. LINGKLIP: Identity theft manuals, I don't know
8 that we have a complete complement of that. I know that
9 there's some reference to identity theft in the dispute
10 manuals, but we do not have anything else relating to identity
11 theft besides I think one manual out of four.

12 THE COURT: All right. Well, three will need to be,
13 I'll grant as to three. I'm just going give you a ruling as to
14 each and every one of these that's in dispute. So three will
15 be granted. Four is already resolved it sounds like.

16 MR. LINGKLIP: Correct, your Honor. Financial
17 documents, we have nothing.

18 MR. KOPP: Judge, and that's, again they're asking
19 for tax returns, shareholder reports, well beyond the scope of
20 anything that's relevant to any, anything --

21 THE COURT: Is CoreLogic part of a public company?

22 MR. KOPP: CoreLogic is, umm, I don't know if --
23 CoreLogic Rental Property Solutions, LLC is a sub of CoreLogic
24 parent.

25 MR. LINGKLIP: And it is traded or at least it was to

1 the last time I looked on the EDGAR database.

2 THE COURT: So what of the financial, umm, let's see.
3 Are those documents filed with like an entity like the S.E.C.
4 or something --

5 MR. KOPP: A corporation deposit 10K annual, but, you
6 know, why would -- annual income statements, annual balance
7 sheets? How is that relevant to any claim in this case?

8 THE COURT: Well, it goes to the issue of punitive
9 damages if they are, if they should -- if there should be an
10 award. I mean, sometimes these things are bifurcated, but if
11 they are publicly available, I don't understand what the
12 problem is.

13 MR. KOPP: Well, I guess it works both ways. I mean,
14 if they're publicly available, then they can obtain it
15 publicly.

16 THE COURT: But are they publicly available or not?

17 MR. KOPP: I think that CoreLogic, the parent files
18 a 10K. I'd have to confirm that for sure, but I believe they
19 do.

20 MR. LYGKLIIP: Your Honor, here's the difficulty.
21 It's not just willfulness. This is part of the Constitutional
22 test for excessive punitive verdicts and so if we wind up with
23 a punitive damage award, one of the ways that the reviewing
24 court and by the way, the review at the Court of Appeals level
25 is de novo, very unusual, but it is de novo in all respects

1 even after a remittitur. The Gore v. BMW, State Farm v.
2 Campbell all require that the courts take into consideration
3 the net worth of the company and as part of its analysis of the
4 reprehensibility and economic --

5 THE COURT: No, I know understand all of that. It's
6 just a question of do you need them to provide this to you or
7 can you get it.

8 MR. LYNGLIP: I need them to provide it because I
9 don't think that the child corporation is filing its documents.
10 They are reporting them up to their publicly-traded parent
11 company, CoreLogic, but those may not be available and I have
12 to fish through them. They've got them. They can produce them
13 and whether they're publicly available, again if you want a
14 supplemental brief on that, I know you don't, but if you do,
15 I've got plenty every case law that says the fact that the
16 documents may be publicly available does not relieve them of
17 the burden of just going to their files and getting it for us
18 and turning it over. On the other hand if we don't get this,
19 there's a Fourth Circuit case, the Doetry (phonetic) case where
20 Aquin refused to produce its subsidiaries materials and we
21 might be able to use the CoreLogic parent company documents as
22 a measure of punitives. I think that what will happen
23 ultimately is if we don't get this, they're waiving any
24 argument, any claims of Constitutional excessiveness as to
25 punitive damages which is why I think it's, you know, to not

1 have this in front of the Court is effectively embedding in our
2 trial or whatever proceedings come later arguments about
3 Constitutionality and waiver that I don't think we want to deal
4 with. I -- they have these documents. They have to report
5 them to their parent. They've got to have them neatly
6 organized and we need them.

7 THE COURT: All right. I'm going order them to be
8 produced. I think that if CoreLogic's parent company is
9 publicly traded, I think that this has got to be, umm, very
10 readily available and probably part of the disclosures anyway
11 and even if it's not, it can be designated as pursuant to the
12 protective order as, you know, as confidential and to only be
13 used as part of this litigation. So the Court will grant those
14 to five as well.

15 MR. LINGKLIP: Number six, I believe that they've
16 tendered those with their first batch of production, the
17 subscriber agreements. Have we got complete copies, Mr. Kopp?

18 MR. KOPP: Yes. Well, for the --

19 MR. LINGKLIP: Right, those were the two we get and
20 that's all we asked for. Six is not needed, it's resolved.

21 THE COURT: All right. Seven relates -- so seven
22 relates to the --

23 MR. LINGKLIP: Same thing.

24 THE COURT: -- specific entities in question here.

25 MR. LINGKLIP: Correct and we, we just didn't know if

1 there were other entities that might have received and I'm
2 accepting Mr. Kopp's representation that there are no other
3 companies that got it.

4 THE COURT: All right. So seven's resolved as well?

5 MR. LINGKLIP: Correct, your Honor.

6 THE COURT: All right.

7 MR. LINGKLIP: The furnishers which is the material
8 that you indicated.

9 THE COURT: All right. Eight is granted.

10 MR. LINGKLIP: Thank you.

11 MR. KOPP: And if there are none, then we'll let you
12 know.

13 THE COURT: If there are none, I wish you would have
14 said there are none, but --

15 MR. KOPP: We gave them the raw data that had
16 received from the Michigan Department of Corrections.

17 THE COURT: But the raw data is not -- that does
18 not -- it doesn't ask for produce the raw data, it asks for if
19 there's contracts or agreements and the existence or absence of
20 such an agreement could be relevant. All right, so anyway
21 eight is going to be required to be answered and if the answer
22 is that no such documents exist, then that answer is fine, but
23 it needs to be provided. All right.

24 MR. LINGKLIP: Nine was not at issue 'cause they
25 answered that.

1 THE COURT: Right.

2 MR. LINGKLIP: This is the documents under which they
3 have acquired public records information, we need that.

4 MR. KOPP: Again, your Honor, the breadth of that
5 request is just significantly overbroad.

6 THE COURT: Why can't we limit it just to the states
7 in question here?

8 MR. LINGKLIP: I'm happy to do that, your Honor, for
9 within the state of Michigan?

10 THE COURT: Didn't you also say Ohio?

11 MR. LINGKLIP: And Ohio, yes, and actually there's
12 actually another conviction from Winder, Georgia, so that would
13 be Ohio, Georgia and Michigan.

14 THE COURT: All right.

15 MR. KOPP: I don't know if that one was reported.

16 MS. BOLOS: I don't believe there --

17 MR. LINGKLIP: The Winder one? Okay, yeah.

18 THE COURT: So Ohio and Michigan?

19 MR. LINGKLIP: Yes, your Honor.

20 THE COURT: All right, fine. That will resolve 10.
21 11? All right, that's going to be granted.

22 MR. LINGKLIP: Great. 12.

23 THE COURT: And just for the record because this is,
24 this transcript is going to be the Court's ruling in this
25 matter, I'm just going to do a short order that says for the

1 reasons on the record. Request number 11 says all documents
2 that show when, where and from whom CoreLogic purchased,
3 obtained or otherwise procured criminal public record
4 information it reported about plaintiff. I don't know how
5 there's, could be any relevance objection to that.

6 MR. KOPP: We didn't object to that on the basis of
7 relevance, your Honor, in the amended response.

8 THE COURT: It says defendants obtained the
9 information relevant from the consumer reports in question.

10 MR. KOPP: No. I'm saying our response in the
11 amended responses that we provided did not object to on the
12 basis of relevance.

13 MR. LINGKLIP: So then he's talking about
14 supplemental response they've provided of --

15 MR. KOPP: Yeah.

16 THE COURT: All right, but I don't have that, right?

17 MR. LINGKLIP: Correct.

18 MR. KOPP: I know. I served it on --

19 THE COURT: All right. Well, so I'm just looking at
20 the old one. So anyway, to the extent there's any, maybe
21 there's nothing else to produce, but 11 is granted. If there's
22 nothing else to produce, you don't have to, you know, you can
23 just indicate that, but to the extent there's still more
24 responsive documents, 11 is granted.

25 MR. KOPP: Okay.

1 THE COURT: 12.

2 MR. LINGKLIP: That's the, umm, that's the, umm, the
3 purchase price, the acquisition price of the data.

4 THE COURT: For what though?

5 MR. LINGKLIP: Of the public record data that they're
6 obtaining.

7 THE COURT: For every single instance?

8 MR. LINGKLIP: Well, this would be normally what we
9 would see -- yes in every single instance, but normally we
10 would see that most credit reporting agencies would only have
11 agreements with one, two, or three public records vendors who
12 would get information for them so there will be an overarching
13 contract and would normally be only one or two of those
14 contracts. If there's more, I understand how that my become
15 unduly burdensome, but my expectation when I requested this was
16 there were only several at most and certainly if you want to
17 limit it to Michigan, I'm happy to take that limitation.

18 THE COURT: All right. Then I'll limit 12 to
19 Michigan and Ohio.

20 MR. LINGKLIP: Ohio, yeah.

21 THE COURT: All right.

22 MR. LINGKLIP: 13 is the data vendor acquisition
23 vetting.

24 THE COURT: All right. I'll grant 13. Again, I
25 think that goes right to the -- you know, that's probably just

1 a couple of documents, right? I mean, I'm assuming it's not,
2 umm, some massive manual or things like that, but they've got
3 to have some kind of training materials or other similar-type
4 materials for their staff as to how they evaluate data vendors,
5 if at all. All right.

6 MR. LYNGKLIP: And your Honor, we have a supplemental
7 in their supplemental response, they've actually objected to
8 that on the grounds of attorney/client privilege --

9 MS. BOLOS: No, no --

10 MR. LYNGKLIP: Oh, I'm sorry, that's 11? I'm sorry,
11 we went back. I apologize, your Honor.

12 THE COURT: Well and just to be clear, I'm not
13 requiring them to produce things that are legitimately
14 attorney/client privilege material. You'll have to do a
15 privilege log for that. I'm just really speaking to the issues
16 that were raised in the motion --

17 MR. LYNGKLIP: Correct.

18 THE COURT: -- as to relevance, overbreadth, things
19 like that. All right. 14, all documents relating to your
20 methods of obtaining public criminal, public record criminal
21 data. That is very specifically germane to the issues in this
22 case so that will be granted.

23 MR. LYNGKLIP: This is the matching algorithms and
24 procedures that would match Randy Reeds to Randy Cleary.

25 MR. KOPP: With respect to number 14 you're saying?

1 MR. LYNGLIP: I'm sorry. I thought we were on 16?

2 THE COURT: 15 now.

3 MR. LYNGLIP: Oh, I'm sorry, 15. Yes, these are
4 part of what you -- 15 and 16 go together. So 16 is actually
5 the algorithms and there is a, umm, let me put it to you this
6 way. If were you to request a credit report or background
7 check concerning anybody, you'd log into a web page and you'd
8 key in the data that you want to match so if you wanted my
9 consumer report, you'd say Ian Lyngklip. You might be required
10 to provide other identification information about me that would
11 enable them to match a search with the records that they have
12 on file. So for purposes of, you know, the major credit
13 reporting agencies, I'm very familiar with their matching.
14 They have a minimum of you've got to provide a name and you've
15 got to provide some other like a minimum of either a soesh or a
16 date of birth to be able to track that back to them, right? So
17 the, this defendant would have to have similar matching
18 protocols to say there's a minimum amount of information that
19 you're required to get so what we want to see is not only the
20 processes and how they actually track that internally once they
21 have those search criteria, but also the minimum requirements.

22 THE COURT: But I guess my concern is you say any
23 document concerning and so that is, I mean, I'm happy to order
24 them to produce like if they have some kind of manual that
25 describes this or some kind of, you know, overarching memo

1 that, umm, that contains the information you need, but the way
2 it's phrased, it would be I think too broad to require any
3 document concerning those matters.

4 MR. LYNGLIP: I understand exactly what you're
5 saying, your Honor, and to be clear about what we think that we
6 would need from that and I will make sure that we get that
7 corrected and don't tender that again, umm, we would normally
8 see the documents that we're really looking for would be things
9 like business analyst rules so that is how that this would be
10 promulgated is that a company like CoreLogic would have a
11 business analyst create plain language rules that they would
12 then hand off to either a software engineer or a computer
13 programmer and those people would then translate those rules.
14 Those might also be in a manual so those would be the two
15 things that we would actually be looking for.

16 THE COURT: Same for 16?

17 MR. LYNGLIP: Those are -- yes.

18 THE COURT: All right.

19 MR. LYNGLIP: Yeah, exactly.

20 THE COURT: Let me hear from the defense. You
21 understand what Mr. Lyngklip is looking for there?

22 MR. KOPP: I do, but I think that if there are
23 documents that identify what that minimum identifying criteria
24 is, name, date of birth that we use that, once we identify that
25 in a document, then I think that sufficiently responds to the

1 request. I'm not sure that they need additional documents or,
2 you know --

3 THE COURT: Well, but I want them to have like to the
4 extent there is a high-level single document that describes
5 what is CoreLogic's system for doing this whatever, you know,
6 it does, whether that's in manual or a memo or, you know, some
7 training material, I agree, I don't want your client to have to
8 produce every single time any, you know, any of these things
9 come up in a document or would have to search for them, but
10 there's got to -- if there's some centralized kind of document,
11 that's what they need to produce. All right, 17?

12 MR. LYNGKLIP: Yeah and these would be the training
13 manuals that describe that, but I think that that's subsumed
14 within what your Honor just ordered, so I think that is taken
15 care of.

16 THE COURT: All right.

17 MR. LYNGKLIP: And I think 18 falls into that same
18 category.

19 THE COURT: All right and 17 and 18 will be granted
20 to the extent I think it's, umm, plaintiff has proffered that
21 he understands those will be subsumed within the answers to 15
22 and 16 provided that CoreLogic answers them in the way that
23 we've discussed.

24 MR. LYNGKLIP: Yes, your Honor.

25 THE COURT: All right. 19 then should be the same?

1 MR. LINGKLIP: Yes.

2 THE COURT: It says compliance with FCRA?

3 MR. LINGKLIP: Yeah, umm, right and that will be the
4 same which takes us to 20, instructions to people who are
5 updating court records. I'm not sure if -- these requests were
6 tendered at a time when we were still thinking that these were
7 court records. I assume that we have a stipulation that these
8 were not actually taken from the court now for from Mr. Kopp;
9 is that correct?

10 MR. KOPP: That's correct.

11 MR. LINGKLIP: So I think that we'll accept it. We
12 don't need that at this point.

13 THE COURT: Okay, so would that be then the same for,
14 let's see, 20?

15 MR. LINGKLIP: That's 20 is what I was actually
16 requesting, your Honor.

17 THE COURT: Oh, I'm sorry. Okay, then 20 you're
18 okay, you don't need any ruling on.

19 MR. LINGKLIP: Correct, your Honor.

20 THE COURT: 21, I would grant 21 other than, you
21 know, if it's attorney/client privileged or attorney work
22 product, those would not need to be produced, but otherwise
23 that certainly could have relevant information about what
24 CoreLogic understood to be any kind of issues with the way that
25 it reported criminal or public record matters and so therefore

1 I think that's relevant.

2 MR. LYNGKLIP: Your Honor, to the extent that they
3 are privileged materials, I assume that your Honor's directing
4 them do that within a privilege log?

5 THE COURT: Yes, as I said, yep.

6 MR. LYNGKLIP: Umm, 22 is reports of, reports to
7 their regulators and shareholders and corporate officers
8 reflecting identity theft incidents within their data.

9 MR. KOPP: Again, your Honor, we would take the
10 position again that that's overly broad and it may be that
11 it's, you know, that for other identity theft situations, they
12 may not have received the information specifically from the
13 same source that was it received for Mr. Cleary so I think if,
14 you know, if it was limited to information obtained through the
15 same source that CoreLogic used to identify the criminal
16 information that it was reported for Mr. Cleary, that would be
17 appropriate.

18 MR. LYNGKLIP: If I may? Your Honor, to my thinking,
19 if the information is important enough to deliver to
20 shareholders, owners and officers, it's important enough for
21 the jury to hear so if they've made a decision internally that
22 they're not making money because of, umm, because of identity
23 theft or that it's impacting their ability to do business,
24 that's notice to them that they've got a problem and whether
25 it's delivered to shareholders or to officers or executives,

1 whoever it's delivered to, that is notice and that should be
2 given to the jury. So for instance if they've written a memo
3 to the board of directors saying incidents of identity theft is
4 is way up, we need to write a disclaimer and not actually
5 guarantee the accuracy of our reports anymore. By the way,
6 that is actually in the subscriber agreements that they've
7 provided which says that they do not guarantee the accuracy of
8 their reports, but if that's a result of identity theft or or
9 something like that, that would be a cue to jury that this
10 company is selling data that they know is, is impaired and so I
11 think that that is not outside the bounds of what's relevant
12 and necessary to prove willfulness in this circumstance and I
13 would hope that there wouldn't be that many of these memos
14 where they are notifying shareholders, directors and officers,
15 but if there are, that would again in and of itself be
16 important information for the jury.

17 THE COURT: I guess my question is though about when
18 you say known problems of identity theft or fraud, what
19 happened here was so specific, right, in connection with a
20 criminal action.

21 MR. LYNGLIP: Actually it's not and that's really
22 the point as Ms. Bolos could probably describe for you and I
23 took the same deposition, you know, with the Haynes case four
24 years ago. Many of these data sources are riddled with the
25 same kinds of information. The problem of having an offender

1 not want to be habitualized or recidivized and assuming
2 somebody else's identity is one of the most common problems
3 that there is in the criminal justice system tracking down
4 people which is why they're trying to move everybody onto
5 fingerprints. I mean, I think the city of Detroit only got
6 fingerprinting maybe within the last five years and access to
7 the NCIS database. You know, the reality is that this is a
8 major problem and to the extent that corporations have
9 knowledge of and they're buying or acquiring data from
10 publicly-available sources, it is up to them, incumbent upon
11 them to make sure that that data source is reliable and if
12 they've got memos suggesting that any variety of data sources
13 like for instance department of corrections data from all over
14 the country, you know, memo to all production managers, we're
15 going to stop selling this data until we, you know, recognize,
16 been able to vet this data.

17 THE COURT: As I said, I would agree to the extent it
18 intersects in some way to the facts of this case where it
19 involves a criminal case or an offender --

20 MR. LINGKLIP: Okay.

21 THE COURT: -- I would agree, but I think that just
22 in general to say you want them to produce all these documents
23 related to known problems of identity theft is just, that to me
24 is really broad and much broader than a criminal defendant
25 usurping the name of somebody else.

1 MR. LYNGKLIP: I'm happy to take that out of the
2 discovery with the limitation your Honor just placed on it.

3 THE COURT: All right. So it will be, the request
4 will be granted subject to the reports and documents being
5 related to, you know, the criminal context, all right?

6 MR. LYNGKLIP: That's --

7 THE COURT: Although just for the record I sit in
8 Detroit one week every five and here probably 20, 15 criminal
9 cases every day during that week and I've only maybe seen one
10 or two where the person, where they don't know who the person
11 is and the person's not given his own name, and but that's just
12 an anecdote, but --

13 MR. LYNGKLIP: I would just so your Honor's
14 experience doesn't necessarily translate over, again, they're
15 dealing with U.S. marshals who have direct access to the
16 federal NCIS database and have biometric matches available and
17 fingerprinting readily available to them. Having people come
18 into the court and try to lie about who they are to the FBI is
19 a different thing than trying to lie to the Canton police
20 department or the Redford Police department which is what
21 happened in many of the instances of these cases is, you know,
22 these things are all being initiated out of district court
23 where there's no vetting of any of this happening, so I totally
24 understand that experience for your Honor and I would agree
25 that would be par for the course in Federal Court, but in a

1 city like Detroit where they didn't have access to fingerprint
2 matching technology until very recently, this was a huge
3 problem and remains so throughout the country in many other
4 resource areas.

5 THE COURT: All right.

6 MR. LYNGLIP: Administrative complaints for
7 violation of FCRA -- oh, I'm sorry, I think 23 is the same as
8 for 22, your Honor, would need to be limited the same way.

9 THE COURT: All right. Again, limited to criminal
10 cases and again that one specifically calls for legal
11 memoranda, so again just highlight that I'm not requiring any
12 privileged materials to be produced.

13 MR. LYNGLIP: Thank you. Then 24's administrative
14 complaints against CoreLogic.

15 THE COURT: All right. Those are all public record.
16 Those can be produced.

17 MR. LYNGLIP: Thank you. 25 is instructions for
18 compliance with EB which is the claim in this case.

19 THE COURT: All right. That will need to be
20 produced.

21 MR. LYNGLIP: Cost benefit for preparation of
22 consumer reports which is 26.

23 MR. KOPP: Again, subject to privilege.

24 THE COURT: All right, fine. Subject to privilege
25 that can be produced. 27 though, your annual budget for

1 litigation and settlement of cases involving of FCRA claims?

2 MR. LYNGLIP: Yeah.

3 THE COURT: What is that?

4 MR. LYNGLIP: Well, your Honor, I can tell you that
5 one of -- the anticipated use at trial would be something along
6 the lines of what you might have heard of as the Pinto let 'em
7 burn memo. So the question is does, you know, does this
8 defendant make a decision that it's cheaper to defend these
9 cases and to settle these cases out rather than to go to the
10 expense or have to take a hit to their actual production of the
11 product and correct the problem. So that's the picture that we
12 want to paint is that they could easily screen out this data
13 and not sell the data that they they think is impaired, but
14 maybe they've made a decision that hey if it only costs us a
15 million dollars and we're making 25 million dollars on these
16 materials, why should we change? We'll just pay the lawsuits.

17 THE COURT: All right. I don't need to hear from the
18 defense on this and I'm not going allow 27. I think that,
19 number one, that goes -- there's no way to really divorce that
20 from an attorney/client-privilege-type analysis because that's
21 going to be a determination that's made along with the advice
22 of the attorneys and it involves litigation and secondly, I
23 have ordered the production of all the financial information.
24 I think you can make, you know, a higher-level argument and
25 maybe not quite as detailed as what you'd want to make, but

1 it's also I think, umm, that's all that would be re -- you
2 know, that's all that's required is the plaintiff be able to
3 show the financial resources of the defendant and that the
4 defendant ostensibly could have allocated its resources
5 differently rather than getting into the specifics of any kind
6 of set asides for litigation or settlements, so I'll deny 27.

7 MR. LYNGLIP: Understood, your Honor. Employee
8 records for people preparing reports for plaintiff. I don't
9 know that in fact there are actually any people. You know,
10 sometimes records checked work is actually person work and
11 there are some companies that do this. Personally I don't know
12 whether there is actually a person or whether it's just an
13 automated process. If it's an automated process, there's
14 nothing here to produce and I'd leave that to your Honor.

15 MR. KOPP: That's correct, your Honor. It's
16 automated.

17 THE COURT: All right. Well, then you can just
18 answer it that way. All right.

19 MR. LYNGLIP: Bulletins and manuals concerning
20 accuracy to furnishers. Again, this goes back down to the
21 issue of whether or not they're taking adequate precautions to
22 ensure that they've got accurate data in the system and whether
23 there's an overall, I want to say an overall culture of
24 compliance or whether or not they're just letting these people
25 produce whatever they want to produce.

1 THE COURT: All right. Well, it does say it is
2 related to the furnishers of credit information at issue in
3 this case --

4 MR. LINGKLIP: Correct, your Honor.

5 THE COURT: -- and so it's fairly narrow and so those
6 would be with third parties?

7 MR. LINGKLIP: Yes, people who are actually
8 furnishers and have furnisher agreements. To the extent that
9 they're scraping the data from OTIS and taking the data rather
10 than being given the data, that wouldn't apply to OTIS, but,
11 you know, if they have other furnishers whose data they
12 provided concerning Mr. Cleary, that would make an app -- umm,
13 an appropriate acquisition.

14 THE COURT: All right. Earlier the request had
15 sought information going back I think three years for the most
16 part, so that should be sufficient?

17 MR. LINGKLIP: Yes, your Honor.

18 THE COURT: All right. Then I'll limit it to three
19 years for 29 because that was one of the objections is that it
20 went back too far. All right, 30, the, any document explaining
21 the meaning of abbreviations, codes?

22 MR. LINGKLIP: Yes, your Honor. This is absolutely
23 necessary. Virtually all of the internal computer documents
24 that they've got about how things are processed are coded.
25 They're heavily coded. They've got computer instructions in

1 them and we have no way of translating these and effectively
2 what that means is that the doc means anything that a witness
3 wants it to mean on the stand. If there's a standardized
4 format for interpreting coded records, we need to see that.

5 THE COURT: All right. Counsel, I assume if you have
6 that, great. If you don't have that, then I guess you can
7 either ask the 30B6 witness all of those codes or maybe have an
8 interrogatory that just asks them to define them.

9 MR. LYNGLIP: We actually have tendered that
10 interrogatory and we're going to visit that interrogatory
11 later.

12 THE COURT: All right. So 30 will be -- but I may
13 grant 30, but only if there's like a document. I mean, they
14 don't have to go through like finding, look through a million
15 different documents to try to find --

16 MR. LYNGLIP: They don't have to create it if this
17 doesn't exist, your Honor. If it already exists --

18 THE COURT: I know, but if they have one document,
19 one needle in a haystack that happens to define one of the
20 codes, they don't need it look for, so if you have like a
21 definitions page.

22 MR. LYNGLIP: And that's exactly what we would be
23 hoping to find is that normally in a user manual there would be
24 a definitions page for those or they might be find in a data
25 dictionary or data schema. Either one of those two things

1 would normally have to something like that.

2 THE COURT: All right. As long as it's something
3 like that like a single document, that's fine. All right, 31?

4 MR. LYNGLIP: Is the transcripts of the 30B6
5 witnesses.

6 THE COURT: In other cases?

7 MR. LYNGLIP: Yes, your Honor. We have, we have
8 found that these 30B6 witnesses tend to, I want to say we might
9 argue that they conform their testimony to, to fit the case
10 that they've got and they provide very fruitful, umm, very
11 fruitful cross-examination.

12 MR. KOPP: And again just objecting on the basis of
13 overly broad, your Honor. I don't even know that there's a
14 repository of 30B6 deposition transcripts available that we
15 would be able to identify all the 30B6 depositions that have
16 been taken by CoreLogic's representatives.

17 MR. LYNGLIP: Your Honor, CoreLogic has been
18 represented in, well, in virtually every case that I've had
19 with them and everyone that I'm aware of throughout the country
20 and previous, they were represented by an attorney by the name
21 of Ron Raether (phonetic) previously, I don't know where he was
22 before, but he's now been front and center. They've been
23 represented by the same counsel and the same national counsel
24 for years and years and they have, you know, these records are
25 in the hands of their attorneys and they should be able to turn

1 these over right away. This should not be a very difficult
2 process.

3 MR. KOPP: Again, even just the relevancy of it.

4 THE COURT: Yeah, I just, I've never seen a request
5 like this where you ask for a witness' prior 30B6 depositions.
6 We don't know what those depositions were on, what they were
7 regarding, what kinds of, you know, cases and if anything has
8 changed since now or then and, you know, you have a right to
9 ask their 30B6 witness any questions you want about their, you
10 know, the topics which you identify in the 30B6 notice and,
11 umm, you know, so I think that would go too far in the type of
12 information that you're asking.

13 MR. LYNGLIP: Thank you, your Honor.

14 THE COURT: So 31 is denied.

15 MR. LYNGLIP: Shareholder reports of past
16 litigation.

17 MR. KOPP: Again, your Honor, we would just argue
18 about the scope of that request. I mean, I think it's, you
19 know, doesn't really define type of litigation and where
20 temporal boundaries.

21 MR. LYNGLIP: And I would limit that to the past
22 five years, your Honor, but I would say this, that ultimately
23 the things, the kinds of things that CoreLogic reports up to
24 its shareholders would be important for the jury to see that in
25 light of and there are a lot of cases against CoreLogic, that

1 in light of that and the past history of litigation, that none
2 of that past litigation to consumers ever makes it to the board
3 of directors and the only things that they seem to take notice
4 of are problems with their customers which is not the
5 consumers, the customers are people they're supplying.

6 THE COURT: But I've already ordered them to produce
7 and there have already been or document requests that speak to
8 this issue like reports and disclosures to agencies and, so --

9 MR. LYNGLIP: To the extent it's duplicative, I'll
10 take what your Honor has already given me.

11 THE COURT: All right.

12 MR. LYNGLIP: 33 is the insurance policy. Again, I
13 think we're absolutely entitled to that, not just the dec page.

14 MR. KOPP: We already responded --

15 THE COURT: They say they don't have any.

16 MR. LYNGLIP: Umm, well, apparently they have --
17 they do have something 'cause they gave us this dec page on
18 Friday. Was it Friday?

19 MS. BOLOS: Yes.

20 MR. LYNGLIP: Yeah, on Friday they gave us a dec
21 page for a policy, so there's actually a policy.

22 MR. KOPP: My understanding is there's no insurance
23 coverage that would be applicable based on the allegations in
24 this complaint. I think the dec page is of the general
25 liability policy.

1 THE COURT: Well, I forget -- doesn't Rule 20, umm.

2 MR. LYNGLIP: 26(a)(1).

3 THE COURT: Yeah, 26(a)(1) disclosure requires the
4 disclosure of insurance that might cover the claim and so if
5 they're contending that it does not cover the claim, they
6 wouldn't need to produce it.

7 MR. LYNGLIP: Well, I think that --

8 THE COURT: But I --

9 MR. LYNGLIP: -- I understand exactly what you're
10 saying, but if there's a policy within which this might cover
11 it, there's plenty of case law dealing with the idea that
12 defendants self-edit this in order to avoid disclosure to their
13 insurance companies of a claim that would actually be covered.
14 So, I mean, I can -- I mean, I've been in this Court dozens of
15 times with defense saying we have self-retention, we're not
16 tendering a claim, therefore there's nothing that covers it.
17 They don't get to make that choice. If, you know, if it's an
18 auto no fault policy, I get it, I completely get it, but they
19 have a general business policy that covers claims against
20 product, umm, product liability or liability for violations of
21 the FCRA. The fact that they self-determined that this might
22 not cover, that's not, that's not an appropriate response.

23 THE COURT: So I'm just looking for the provision in
24 Rule 26 that requires disclosure of insurance policies.

25 MR. LYNGLIP: I know it's been -- it's 26(a)(1) sub

1 4.

2 THE COURT: Yes, thank you. Any insurance agreement
3 under which an insurance business may be liable to satisfy all
4 or part of a possible judgment in the action and the defense's
5 response was defendant has no insurance coverage that would be
6 applicable based on plaintiff's allegations so I, I mean, that
7 doesn't actually track the language. So I guess all I would do
8 is just order, you know, Rule 26(a), the provision we were just
9 discussing, (a)(1)(a)(4), it needs to be complied with and so
10 to the extent that that insurance policy might make the
11 insurance business liable to satisfy a judgment, it needs to be
12 produced, the policy, but I mean, I can't say whether it does
13 or doesn't without --

14 MR. LINGKLIP: Without seeing the policy.

15 THE COURT: Without seeing it. I don't even know if
16 I could make that determination if I did see it.

17 MR. LINGKLIP: Understood, your Honor.

18 THE COURT: What is the dec page that you've been
19 provided show?

20 MR. LINGKLIP: It shows that they have a general
21 liability policy and a stop gap liability policy. I don't know
22 what that is, but, you know, I would take a dec, a
23 certification from counsel that this is, there's no FCRA suit
24 that has been or could be tendered under this policy. I think
25 that would be plenty good.

1 MR. KOPP: I can get that.

2 THE COURT: All right, fine. That resolves that.

3 30. 34 is just, I mean, they have their own, umm, disclosure
4 obligations and --

5 MR. LINGKLIP: And that tracks also for 30 -- number
6 35 -- oh, yeah, right, I'm sorry. This is not actually a
7 subject of the motion. It's not at issue.

8 THE COURT: All right, great.

9 MR. LINGKLIP: And that would probably be the same
10 for number 35 or 34 and then --

11 THE COURT: And 36 I think.

12 MR. LINGKLIP: Yeah and then 36 is any expert
13 witnesses that they've retained them. So, I mean, I understand
14 that that's not at issue as well.

15 THE COURT: All right, great. So that covers that
16 entire motion. Let's see. The interrogatories, do we need
17 separate argument on that or it seems like it's very similar.
18 I had actually kind of intended to cover them all, both of
19 those at the same time.

20 MR. LINGKLIP: Umm, yeah. I'm sorry, before we leave
21 the production, there was one last thing that just came to
22 light on Friday when we got the supplemental production.

23 THE COURT: All right.

24 MR. LINGKLIP: We did specify the format for, for
25 this production. We did ask for where available native format

1 documents, PDFs that if they have them in PDFs, we want their
2 original PDFs with all their metadata intact. We received
3 200-odd pages of manuals that had been printed and rescanned.
4 That is not what we asked for and certainly does not conform to
5 the requirements of the Rule. We would ask that they reproduce
6 those documents and that any production that they give us
7 conform to the requested formats and, umm, that they not
8 actually print them and rescan them.

9 THE COURT: From manuals?

10 MR. LINGKLIP: Yes.

11 THE COURT: All right. Counsel, do you know, do you
12 have those available in some kind of native format? I mean --

13 MR. KOPP: I don't know, your Honor. I received them
14 the way we produced them.

15 MR. LINGKLIP: Your Honor, normally these manuals are
16 maintained online on a website in a PDF format and it's as
17 simple as actually copying those manuals from their PDF to
18 that. Now normally the practice has been for defendants to
19 again as I say print them to a printer and rescan them so that
20 there is no ability for anybody to get at the metadata that's
21 actually buried in those documents. That's why we asked for
22 this. The idea that if they've got documents, they have to
23 have them in a native format. They were prepared either using
24 MS Word or a design program and they were printed to probably a
25 PDF or an HTML page. Those are there and available. The

1 printed formats that they give us are absolutely or, yes,
2 either they're effectively useless.

3 THE COURT: Well, other than the substance that they
4 contain. Mine, unless you think they've been altered.

5 MR. LYNGLIP: Well, they've been altered to limit
6 they're usefulness to me. Specifically, they're not text
7 searchable so it's just an image so it's like they've got the
8 ability to look through this and key search through this and
9 look for words and phrases and have this at their disposal and
10 I got to rely on an OCR and I've got to reprocess all of these
11 documents which is now you difficult because they've got a big
12 confidential brand across the top all across the page that's
13 going to limit our ability to do this and that's exactly what
14 it's designed to do.

15 THE COURT: All right. If they have them in format,
16 you know, I mean, that should be just as easy to produce,
17 probably easier in some respects than photocopying them and
18 Bates labeling them, they can produce them. I just don't
19 know what -- if they don't have it in that kind of format,
20 then they don't, but if you do, then they should be produced
21 that way.

22 MR. LYNGLIP: Thank you, your Honor. So then as to
23 the interrogatories, these, umm, some of these are going to
24 track over, but, I mean, when we start at the front end of
25 these things, we start with some contention interrogatories

1 that we need to have answered that we're entitled to have
2 answered as a first instance like finding out whether they're
3 going to concede that the reports are inaccurate and that
4 they're inaccurate in relation to Mr., Mr. Cleary. Having
5 those objections is not helpful. That's interrogatory number
6 one. Identifying products and services that they sell that's
7 not covered in any of the production requests, that that is
8 again something that's at risk for Mr. --

9 THE COURT: All right. We're going to take a short
10 break and I want you guys to talk about these interrogatories.
11 I think you've got to be able to in light of the rulings that
12 I've already made on the substance of the motion for production
13 to be able to resolve, hopefully resolve most if not all of
14 these in just a, you know, 10 minutes. We've been going for an
15 hour and 45 minutes anyway so just take a short break. You can
16 talk about some of these things and we'll come back on the
17 record in like 10 minutes.

18 MR. LINGKLIP: Can we say, umm, build in five minutes
19 for me to use the --

20 THE COURT: Yes. We'll come back at noon.

21 MR. LINGKLIP: 12 straight up?

22 THE COURT: All right, thank you.

23 MR. LINGKLIP: Thank you.

24 THE CLERK OF THE COURT: All rise. Court is briefly
25 adjourned.

1 (Recess taken at 11:44 a.m.)

2 (Reconvened at 12:03 p.m.)

3 THE CLERK OF THE COURT: Please rise. Court is back
4 in session.

5 THE COURT: All right. How do we look?

6 MR. LYNGKLIP: Better than we looked when you went
7 out that door.

8 THE COURT: Good.

9 MR. LYNGKLIP: So I'm going to give you the very,
10 very short answer of this which is that there's only two
11 interrogatories that remain in dispute.

12 THE COURT: Okay.

13 MR. LYNGKLIP: Which are interrogatories number six
14 and 16. I don't know if we need to make a record of, of the
15 others, but I will say this, that plaintiff withdrew better
16 than half of the ones that are at issue because we've been
17 given documents that tracked what those are and Mr. Kopp has
18 agreed to withdraw his objections to several of these and we're
19 going to live with the answers and the only one that requires
20 some additional attention is interrogatory number 18 which is
21 as to authoritative treatises for experts. We don't -- Mr.
22 Kopp has indicated that he has not yet retained an expert and
23 therefore there's no data to provide or information or answer.
24 He will answer -- withdraw his objections and provide
25 supplemental information when and if he gets an expert. Fair

1 to say?

2 MR. KOPP: Fair.

3 THE COURT: Okay.

4 MR. LYGKLIP: Do we want to go through each of these
5 so you know what we're doing or?

6 THE COURT: No, I trust you to, you know, you'll
7 memorialize your agreement between yourselves and I'm sure I'll
8 hear from you if there's a problem.

9 MR. LYGKLIP: We will -- Mr. Kopp, is it okay if we
10 summarize that with a stip and order?

11 MR. KOPP: Sure.

12 MR. LYGKLIP: So we have three attorneys who all
13 took notes. I think we can get that in front of you without
14 too much trouble, so I appreciate the direction you gave us
15 with the production requests and now we can move to the last
16 thing which is the 26(a)(1) motion.

17 MR. KOPP: Well, do you want to address six and 16?

18 MR. LYGKLIP: Oh, I'm sorry, I forgot. Yes, we
19 actually have something at issue here. I was anxious to move
20 forward. So that's -- so number six is, umm --

21 MR. KOPP: All lawsuits that have been filed --

22 MR. LYGKLIP: Yeah. So number six is seeking the
23 lawsuits that are limited to allegations where there's an
24 issuance of a report and it's about another individual. So
25 effectively this is only lawsuits dealing with consumers who

1 claim that they've been misidentified as committing a crime.
2 So, tracking to the specific facts of this case. So that's
3 what we're looking for is for information about, umm, those,
4 those individuals where there's a case that's been filed and
5 any settlement or judgment that's paid on that.

6 THE COURT: All right. Let's hear from the defense
7 on this one.

8 MR. KOPP: Sure, your Honor, and again six and 16 are
9 kind of go hand in hand. Six is the, they're asking us to
10 identify the dispute or the lawsuits involved in a report
11 containing data attributable to more than one person or about
12 another person and 16 is any settlements or judgments paid in
13 any lawsuits in which they were alleged that have improperly
14 prepared a consumer report and again our objection is that this
15 is or these are overly-broad both as to scope and as to time.
16 They're not relevant to the issues that are alleged in the
17 complaint and as to the settlements, many of the settlements
18 are confidential.

19 THE COURT: Well, let's first just talk about the
20 substance, not the settlement because I agree that that's a
21 different issue, but in terms the request itself for cases, if
22 there are other cases that where, where it involved facts
23 similar to this with a criminal matter, why is that not
24 relevant to see well that at least to know that the,
25 potentially that the defendant was aware of this potential

1 issue and therefore on notice that, you know, maybe what it was
2 doing wasn't sufficient. If it's a criminal case where they
3 used the similar type.

4 MR. KOPP: Right.

5 THE COURT: And I understand that's not the way
6 the -- I don't see that's the way the interrogatory's worded.
7 I think the interrogatory's worded much more broadly than that
8 because it just says, it just talks about, umm, it just talks
9 about an individual where there was, where you are alleged to
10 have improperly issued a report containing data attributable to
11 more than one person. That's maybe or that is much broader
12 than what Mr. Lyngklip, what I heard him offer a more narrow
13 request related to where the consumer in question is confused
14 with a different criminal defendant or offender.

15 MR. LYNGLIP: Right.

16 THE COURT: Which would to me that would really bring
17 into bear issues relevant to this particular case.

18 MR. KOPP: I'd have less of an issue with that,
19 especially if it didn't contain the judgment or settlement as
20 requested.

21 THE COURT: All right. So, well, let's first talk
22 about just the, so I will grant six with respect to, as to the
23 first part with respect to cases where the subject of the
24 report is complaining about being confused with a, you know, a
25 criminal defendant and, you know, again I think that is

1 relevant here.

2 MR. KOPP: Within a time period, your Honor?

3 THE COURT: Yes, so go ahead.

4 MR. LYNGLIP: Five years, your Honor?

5 THE COURT: Is that okay?

6 MR. KOPP: Sure.

7 THE COURT: Okay, all right. Five years seems fine,
8 and then so I think case, case name, number, venue, you know,
9 et cetera is sufficient, but I would, umm, and if there is a
10 judgment that is, you know, part of a public record, then I
11 would agree that ought to be produced. I will not order the
12 production of any settlement amount though, umm, because I do
13 think those are, umm, I guess I'm assuming it has like a
14 confidentiality provision in it and, you know, if that's the
15 case which I assume it would because I think every case I've
16 settled with private parties has had one, then the defense
17 could just indicate that, umm --

18 MR. LYNGLIP: It's a confidential settlement.

19 THE COURT: A confidential settlement not to be
20 produced, all right? And so then 16- --

21 MR. LYNGLIP: That should resolve that for us as
22 well, your Honor.

23 THE COURT: Okay. So that resolves that motion.

24 MR. LYNGLIP: Great, which takes us to Rule 37 C.
25 That's number two.

1 THE COURT: All right.

2 MR. LINGKLIP: Okay.

3 THE COURT: And given that you now have this
4 extension of the dates, if they give you the names, does
5 that -- is there anything else we need to argue about if I
6 order them to just identify who it is we're talking about?

7 MR. LINGKLIP: Your Honor, well, I'm -- I think --

8 THE COURT: I mean, if you have additional time to do
9 whatever discovery you need and ask the right people the right
10 questions, I mean --

11 MR. LINGKLIP: So let me just say my short piece on
12 Rule 37. We filed those motions together because of the
13 dilemma, the inherent dilemma that we have which is we don't
14 know witnesses and we either need to exclude them under Rule 37
15 or we need to have them in a chair and know who they're going
16 to be and what they're going to testify to. Inherently, I
17 understand completely that the way that this system is designed
18 to work and what we have given our oath to make sure works is
19 that when we can, we want to get to the merits of the claims
20 including the defenses and I'm good with that.

21 What I would like to see out of this motion at this
22 moment 'cause your Honor's given me pretty much everything that
23 I need that would track to Rule 26(a)(1), I do need an updated
24 disclosure from them so yes, I've got the identity of
25 witnesses, Mr. Kopp has agreed to give me identity of witnesses

1 who know things. That is not the same as getting a proper
2 disclosure the witnesses which is them telling me which of
3 those people in that broader subset of people who know stuff,
4 which ones they plan to call and what they plan to have them
5 say when they get on the stand. I think that that's the
6 important part and I will waive the request for the 37C
7 exclusionary remedy at this time to the extent that I can get
8 the description of who it is that they think they're going to
9 produce and what they're going to talk about and get the
10 descriptions. I mean, I think we've got other documents and I
11 think that the way that the case law reads on the document
12 production is that if they turn it over to us, they can use it
13 so to the extent that we're getting the documents via the
14 request for production, that is not at issue. So the only
15 thing that would be at issue would be I would want to see a
16 proper supplementation that describes the witnesses which takes
17 us now to the last, the very last part of this which is the
18 time necessary to do it and I know your Honor hasn't written
19 this, this memorandum order yet. I'm not sure what time frame
20 we're going to get all this information in and, you know, we
21 have been scrambling and working as hard as we can to get a
22 date so that we can get a 30(b)(6) witness in the chair before
23 the New Year's and we only have two months. Given what the
24 difficulties that we have had in scheduling before, umm, I am
25 deeply concerned that I'm going to get a very large volume of

1 documents right before Christmas and then I'm going to be
2 scrambling to try and get all of their witnesses into a seat
3 in, you know, in a month and-a-half when everybody's
4 effectively indisposed through the first week in January. So,
5 umm, so the answer is yes, it's going to be ameliorated with
6 time. I'm just not sure the extent to which we can do things
7 about that.

8 THE COURT: Can you agree on an amount of time for --

9 MR. LYNGLIP: I think that we could agree on a
10 further extension. I just don't know if that's within the
11 Court's, umm, within the Court's referral. I think we may have
12 asked for more time. Did we ask for time? We already did one
13 extension to February 20th, but the only question is whether
14 it's within the scope of the referral to you and whether you
15 have the ability to do that, so I don't know that.

16 THE COURT: I'm on good terms with Judge Friedman, so
17 I could always call him.

18 MR. LYNGLIP: That would make you like everybody
19 else who's ever met him, so --

20 THE COURT: My first job out of law school was
21 clerking for Judge Friedman, so.

22 MR. LYNGLIP: Did you work with Judge Levy?

23 THE COURT: I came right after Judge Levy. Two after
24 Barb McQuade, so I would assume -- I can call Judge Friedman's
25 chambers after this hearing. I would assume that you can get

1 any kind of reasonable extension you need in light of what's
2 happened here today in terms of the orders for the, you know,
3 that more documents are going to be produced and that you need,
4 you know, with the holidays, Judge Friedman is pretty
5 understanding. So I would assume as long as you're not asking
6 for the world in terms of time, that you'll be able to work
7 that out.

8 MR. LINGKLIP: Okay. Great. Well, then we'll --
9 what I'll do is we'll confer with Mr. Kopp after we've got the
10 order in place and we will make a proposal and circle back with
11 Mr. Butts and maybe have another status conference if that's,
12 that works for you?

13 THE COURT: All right, that's fine.

14 MR. LINGKLIP: Okay, great. So I don't think there's
15 anything else --

16 THE COURT: And let me hear from the defense. I'm
17 assuming you're okay with that or just writing a supplemental?

18 MR. KOPP: I am or we can just say, you know, 60 days
19 or something that we think would be fine. We'll talk about
20 that.

21 MR. LINGKLIP: I just want to see what the production
22 is going to look like and how long we're going to have to get
23 before they have to give that to us because if it's a lot -- it
24 may be a lot of work for them to get their arms around.

25 THE COURT: I was going to ask that and I realize I

1 had failed to do that. In terms of the documents that I have
2 ordered to be produced today, is 30 days sufficient or is that,
3 I mean, I know we are, we do have the holidays and I, you know,
4 I'm not trying to jam anybody and frankly I don't think it's an
5 issue. I think Judge Friedman will give you as I said some
6 additional, you know, reasonable period of time. So I'm just
7 looking for you to tell me, you know, is 30 days? I don't want
8 to push it out too far and, you know.

9 MR. KOPP: I think so, your Honor, but I'd have to
10 talk to my client to find out for sure whether or not they can
11 do that.

12 MR. LYNGLIP: You know, I love 30 days. I don't
13 think that's enough time for them frankly just because I know
14 what's going to happen at the holidays. Their people if
15 they're like every other corporation they're going to cut them
16 loose early and everybody's going to be useless until after the
17 New Year's and if they are able to get into the pipeline now
18 and get like a week or two is good work out people to get this
19 stuff, they'll still need more time after the New Year's and
20 they would need at least another 14 days and I'm not the guy
21 who's trying to drag my client's case out. I want to get in
22 front of the jury as quickly as possible, but I also realize
23 that would make life unlivable for opposing counsel and their
24 client and I don't want to do that.

25 MR. KOPP: That's fair.

1 THE COURT: All right. Why don't we just say 45 days
2 for the production and then that will also, you know, suggest
3 to Judge Friedman's chambers why you need more time beyond just
4 the February. As I said, I don't think you'll have a problem
5 with that. If anything comes up, you'll let me know and so for
6 all those three motions that we've addressed so far, what I'd
7 like to have happen is you all to submit a stip and order. I
8 mean, it can be, you know, to the extent there are any
9 objections to it, it's without prejudice to, you know, for any
10 objections, but I'm not going to go through and memorialize
11 everything that we've done.

12 MR. LYNGLIP: We'll take care that. We will take
13 care of that and we'll just, umm, yeah, we'll take care of
14 that.

15 THE COURT: And you can build in the schedule, too.
16 You can say and proposed, you know, schedule. You can put
17 something in there that says that, you know, the magistrate
18 judge agreed that more time would be required in light of the
19 results of this hearing, you know, however you want to phrase
20 it is fine.

21 MR. LYNGLIP: Great.

22 THE COURT: And then we need to take -- I wanted to
23 address to hopefully resolve this other motion that was just
24 filed on either Thursday or Friday about the, umm, the
25 confidentiality designations.

1 MR. LYNGLIP: Has that been referred yet?

2 MS. BOLOS: Yes, it has been referred. It's not
3 responded to.

4 THE COURT: Yes.

5 MR. LYNGLIP: I hadn't responded. I was out on
6 Friday so I haven't had a chance to look at the motion yet,
7 your Honor.

8 THE COURT: Yeah, but it's Monday. No, I understand,
9 but I read it and I don't want to have another hearing or phone
10 calls. I mean, can you -- I mean, there really wasn't anything
11 to the motion other than apprising me that they didn't respond
12 to your attempts to meet and confer which is, I want to just
13 address that as an issue because I think we've shown today all
14 these things, if you guys just would talk more and I'm not
15 pointing the finger at anyone in particular. I'm just saying
16 and I tried to do that. I mean, that's why I got you guys on
17 the phone to avoid this and now we've spent two and-a-half
18 hours here. That motion you've got to be able to figure out, I
19 mean, a reasonable, umm, if it's over-designated, that it needs
20 to be withdrawn and to the extent it's really proprietary
21 information, I don't even know what it is because the motion
22 itself never really got past first base in terms of saying they
23 didn't engage in the meet and confer process. There wasn't any
24 real discussion of the merits of it, so.

25 MR. LYNGLIP: I, just and I'm not asking your Honor

1 to point fingers or to take any action against any attorney
2 here. I'm just saying we really, we had a tight deadline. We
3 stuck to our deadline and we are trying desperately to get
4 these discovery issues resolved. We are sending letters that
5 are very detailed and we're making ourselves as available as we
6 possibly can. We are happy to take another crack at a meet and
7 confer and waive the time limits of their objections if we can
8 have a meaningful conversation with them. We're happy to do
9 that if you will instruct counsel to make themselves available.

10 THE COURT: All right. Anything --

11 MR. KOPP: I'm available.

12 MR. LYNGLIP: Withdrawing the motion without
13 prejudice if that's acceptable to your Honor.

14 THE COURT: That's fine and or I can enter an order
15 just denying it as moot and ordering a further meet and confer
16 if you --

17 MR. LYNGLIP: However you want to do it. I don't
18 want to appear to be obdurate. I'm not trying to be obdurate.
19 I'm trying to get this moved along.

20 THE COURT: No, I understand it should be and that's
21 why I wanted to address it and because the, you know, there
22 needs to be, umm, cooperation and when they write and, you
23 know, and it's especially when the terms of the protective
24 order say five business days, you at least need to send an
25 e-mail back and say and I don't know, maybe you did. I mean,

1 I'm not -- it hasn't been fully briefed and so I'm not making
2 any rulings or anything, but you need to then at least e-mail
3 back and say, you know, five days isn't enough because so and
4 so's out of town or I just need more time or you can't just be
5 radio silent and then leave the plaintiff to well, do they act,
6 do they file a motion, do they not and then if they don't, then
7 there's an argument that well they didn't pursue it quickly
8 enough and so it's just, you know, that's why we have these
9 deadlines in place. So I'll just enter a very short order
10 denying the motion without prejudice and ordering a, you know,
11 a meet and confer and also, you know, indicating that I think
12 this whole hearing really could have, there were a couple of
13 issues that were of significance that needed to probably be
14 flushed out and hear from the parties on and that are of
15 substantive nature to the claims and defenses, but 90 percent
16 of this could have been avoided, so anyway we'll get that order
17 out on that one. You guys get me the, umm, stip on the other
18 motions that we resolved along with a proposed schedule and
19 hopefully the next thing we see is more, you know, substantive
20 on the merits, okay?

21 MR. KOPP: I'll do that.

22 MR. LYNGLIP: Thank you, your Honor.

23 THE COURT: All right, thank you all. Take care.

24 MR. LYNGLIP: Appreciate your time. You spent a lot
25 of it with us. I really do.

1 THE COURT: All right, yep. Take care.

2 MR. LYNGLIP: Happy holiday.

3 THE COURT: All rise. Court is in recess.

4 (Hearing concluded at 12:21 p.m.)

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C E R T I F I C A T E

I, David B. Yarbrough, Official Court Reporter, do hereby certify that the foregoing pages comprise a true and accurate transcript of the digital voice recording of the proceedings had in this matter on Monday, December 10th, 2018.

12/16/2018

Date

/s/ David B. Yarbrough

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